

JERAMIE B. FARRENS,  
  
Plaintiff,  
  
v.  
  
CAROLYN W. COLVIN, Acting  
Commissioner of Social  
Security,  
  
Defendant.

)  
) No. CV-11-355-JPH  
)  
) ORDER GRANTING DEFENDANT'S  
) MOTION FOR SUMMARY JUDGMENT  
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## JURISDICTION

Administrative Law Judge (ALJ) Donna W. Shipps held a hearing

1 on October 14, 2010 (Tr. 43-83) and issued an unfavorable decision  
2 on October 28, 2010 (Tr. 20-33). The Appeals Council denied review  
3 on September 12, 2011 (Tr. 1-5). The ALJ's decision became the  
4 final decision of the Commissioner, appealable to the district  
5 court pursuant to 42 U.S.C. § 405(g). Farrens filed this action  
6 for judicial review on September 28, 2011. ECF Nos. 2, 4.

#### 7 **STATEMENT OF FACTS**

8 The facts have been presented in the administrative hearing  
9 transcript, the ALJ's decision, and the briefs of the parties.  
10 They are only briefly summarized here.

11 Farrens was 26 when he applied for benefits (Tr. 32-ALJ). He  
12 completed high school and has worked, but at less than substantial  
13 gainful activity levels (Tr. 66, 76, 250).

14 Farrens alleges physical and mental limitations, but this  
15 appeal is limited only to the ALJ's assessment of mental  
16 limitations. Farrens is able to do dishes, ride the bus and play  
17 video games on the computer. He has problems focusing and  
18 concentrating (Tr. 69-70, 72-73).

19 About five months after onset, Farrens said he could work in  
20 event security if someone would hire him (Tr. 202). He spent a  
21 year and a day in prison for arson in 2004 (Tr. 202, 308, 314).

#### 22 **SEQUENTIAL EVALUATION PROCESS**

23 The Social Security Act (the Act) defines disability as the  
24 "inability to engage in any substantial gainful activity by reason  
25 of any medically determinable physical or mental impairment which  
26 can be expected to result in death or which has lasted or can be  
27 expected to last for a continuous period of not less than twelve  
28 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also

1 provides that a plaintiff shall be determined to be under a  
2 disability only if any impairments are of such severity that a  
3 plaintiff is not only unable to do previous work but cannot,  
4 considering plaintiff's age, education and work experiences,  
5 engage in any other substantial gainful work which exists in the  
6 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).  
7 Thus, the definition of disability consists of both medical and  
8 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
9 (9<sup>th</sup> Cir. 2001).

10 The Commissioner has established a five-step sequential  
11 evaluation process for determining whether a person is disabled.  
12 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person  
13 is engaged in substantial gainful activities. If so, benefits are  
14 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not,  
15 the decision maker proceeds to step two, which determines whether  
16 plaintiff has a medically severe impairment or combination of  
17 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

18 If plaintiff does not have a severe impairment or combination  
19 of impairments, the disability claim is denied. If the impairment  
20 is severe, the evaluation proceeds to the third step, which  
21 compares plaintiff's impairment with a number of listed  
22 impairments acknowledged by the Commissioner to be so severe as to  
23 preclude substantial gainful activity. 20 C.F.R. §§  
24 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P  
25 App. 1. If the impairment meets or equals one of the listed  
26 impairments, plaintiff is conclusively presumed to be disabled.  
27 If the impairment is not one conclusively presumed to be  
28 disabling, the evaluation proceeds to the fourth step, which

determines whether the impairment prevents plaintiff from performing work which was performed in the past. If a plaintiff is able to perform previous work, that plaintiff is deemed not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, plaintiff's residual functional capacity (RFC) is considered. If plaintiff cannot perform past relevant work, the fifth and final step in the process determines whether plaintiff is able to perform other work in the national economy in view of plaintiff's residual functional capacity, age, education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

The initial burden of proof rests upon plaintiff to establish a *prima facie* case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is met once plaintiff establishes that a physical or mental impairment prevents the performance of previous work. The burden then shifts, at step five, to the Commissioner to show that (1) plaintiff can perform other substantial gainful activity and (2) a "significant number of jobs exist in the national economy" which plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

#### STANDARD OF REVIEW

Congress has provided a limited scope of judicial review of a Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold the Commissioner's decision, made through an ALJ, when the determination is not based on legal error and is supported by substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup>

1 Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).  
2 "The [Commissioner's] determination that a plaintiff is not  
3 disabled will be upheld if the findings of fact are supported by  
4 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup>  
5 Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is  
6 more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,  
7 1119 n. 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance.  
8 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989).  
9 Substantial evidence "means such evidence as a reasonable mind  
10 might accept as adequate to support a conclusion." *Richardson v.*  
11 *Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch  
12 inferences and conclusions as the [Commissioner] may reasonably  
13 draw from the evidence" will also be upheld. *Mark v. Celebrezze*,  
14 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review, the Court considers  
15 the record as a whole, not just the evidence supporting the  
16 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22  
17 (9<sup>th</sup> Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9<sup>th</sup>  
18 Cir. 1980)).

19 It is the role of the trier of fact, not this Court, to  
20 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
21 evidence supports more than one rational interpretation, the Court  
22 may not substitute its judgment for that of the Commissioner.  
23 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
24 Cir. 1984). Nevertheless, a decision supported by substantial  
25 evidence will still be set aside if the proper legal standards  
26 were not applied in weighing the evidence and making the decision.  
27 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432,  
28 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to

1 support the administrative findings, or if there is conflicting  
2 evidence that will support a finding of either disability or  
3 nondisability, the finding of the Commissioner is conclusive.  
4 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir. 1987).

#### 5 **ALJ'S FINDINGS**

6 At step one, ALJ Shipps found Farrens did not engage in  
7 substantial gainful activity after onset (Tr. 22). At steps two  
8 and three, she found he suffers from bilateral ankle pain,  
9 hammertoes, asthma, anxiety, depression and personality disorder  
10 with antisocial traits, impairments that are severe but do not  
11 meet or medically equal a Listed impairment (Tr. 22).

12 The ALJ assessed an RFC for a range of light work with the  
13 following mental limitations: no limitations in understanding,  
14 memory, concentration, persistence and pace. Farrens can  
15 occasionally accept instructions and respond appropriately to  
16 criticism from supervisors and set realistic goals or make plans  
17 independently of others. He should work away from the public, and  
18 could work in close proximity to but not in close cooperation with  
19 coworkers or supervisors (Tr. 23-24). At step four the ALJ found  
20 Farrens has no past relevant work (Tr. 22). At step five, relying  
21 on the VE, she found Farrens is able to work as an agricultural  
22 sorter, hand packager and production assembler (Tr. 32-33).

23 Accordingly, the ALJ concluded Farrens was not disabled as  
24 defined by the Act from June 10, 2009, through the date of her  
25 decision, October 28, 2010 (Tr. 33).

#### 26 **ISSUES**

27 Farrens alleges the ALJ erred when she weighed the medical  
28 evidence and determined his mental residual functional capacity.

1 ECF No. 18 at 10-18.

2 **DISCUSSION**

3 **A. Credibility**

4 Farrens does not challenge the ALJ's credibility  
5 determination, making it a verity on appeal. *Carmickle v. Comm'r*  
6 *of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9<sup>th</sup> Cir. 2008).

7 It is the province of the ALJ to make credibility  
8 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
9 1995). However, the ALJ's findings must be supported by specific  
10 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir.  
11 1990). Once the claimant produces medical evidence of an  
12 underlying medical impairment, the ALJ may not discredit testimony  
13 as to the severity of an impairment because it is unsupported by  
14 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir.  
15 1998). Absent affirmative evidence of malingering, the ALJ's  
16 reasons for rejecting the claimant's testimony must be "clear and  
17 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995).  
18 "General findings are insufficient: rather the ALJ must identify  
19 what testimony is not credible and what evidence undermines the  
20 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*  
21 *Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

22 The ALJ found Farrens's medically determinable impairments  
23 could reasonably be expected to cause the alleged symptoms, but  
24 his statements concerning the intensity, persistence and limiting  
25 effects of the symptoms were not credible to the extent they were  
26 inconsistent with the ALJ's RFC assessment (Tr. 25).

27 The ALJ relied on relatively infrequent treatment for  
28 allegedly disabling symptoms, failure to follow treatment

1 recommendations, depressive symptoms are well controlled on  
2 medication, inconsistently reported symptoms and limitations, and  
3 MMPI-2 results in July 2008 indicative of over-reporting (Tr. 25,  
4 27-29).

5 Noncompliance with medical care or unexplained or  
6 inadequately explained reasons for failing to seek medical  
7 treatment cast doubt on a claimant's subjective complaints. 20  
8 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885 F.2d 597, 603 (9<sup>th</sup>  
9 Cir. 1989). Impairments controlled effectively with medications  
10 are not disabling. *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d  
11 1001, 1006 (9<sup>th</sup> Cir. 2006). Over-reporting or exaggerating cast  
12 doubt on credibility. *Tonapetyan v. Haller*, 242 F.3d 1144, 1148  
13 (9<sup>th</sup> Cir. 2001).

14 After review the court finds the ALJ's reasons for  
15 discounting plaintiff's subjective complaints are clear,  
16 convincing, and fully supported by the record. Accordingly, the  
17 ALJ correctly found Farrens's subjective descriptions of his  
18 functional limitations were not fully credible.

19 **B. Residual functional capacity**

20 Farrens alleges the ALJ erred when she failed to include  
21 limitations assessed by Drs. Mabee and Arnold in the RFC. ECF No.  
22 18 at 14-18. He alleges the ALJ failed to set forth the requisite  
23 specific and legitimate reasons supported by substantial evidence  
24 for rejecting these contradicted opinions.

25 The Commissioner observes the ALJ correctly gave little  
26 weight to Dr. Arnold's assessed moderate and marked social  
27 limitations. The ALJ's reasons include (1) invalid MMPI-2 results  
28 suggestive of over-reporting (2) moderate and marked social

1 limitations are inconsistent with both the level of mental health  
2 treatment sought and with the ability to maintain friendships (3)  
3 symptoms were reported to be well-controlled with medication and  
4 (4) Farrens showed no signs of marked social limitation during two  
5 months of mental health treatment. ECF No. 18 at 10-11, citing Tr.  
6 31, 381-82.

7 The Commissioner is correct.

8 *John Arnold, Ph.D.*

9 On May 25, 2010, nearly two years after onset, Dr. Arnold  
10 diagnosed psychotic disorder NOS, major depressive disorder  
11 (recurrent, moderate), paranoid personality disorder with  
12 antisocial features and a GAF score of 58.<sup>1</sup> He opined Farrens was  
13 markedly limited in the ability to relate appropriately to  
14 coworkers and supervisors and in the ability to respond  
15 appropriately to and tolerate the pressures and expectations of a  
16 normal work setting (Tr. 595-96).

17 The ALJ accurately observes Dr. Arnold's assessment is  
18 contradicted by other evidence.

19 At the hearing Margaret Moore, Ph.D., testified that the  
20 record as a whole does not support a psychotic disorder NOS  
21 diagnosis. She opined the symptoms described are more likely a  
22 part of the diagnosed personality disorder, a diagnosis made  
23 consistently throughout the record. Although during an evaluation  
24 Farrens reported hearing voices, he did not report this to  
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26 <sup>1</sup>A GAF of 60-51 reflects: Moderate symptoms or moderate  
27 difficulty in social, occupational, or school functioning. See  
28 DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, PAGE 32 (4th ed.  
1994).

1 treatment providers at Spokane Mental Health, undercutting the  
2 credibility of the claim (Tr. 481). There is evidence of psychosis  
3 induced by marijuana abuse (Tr. 434, 451, 471, 481). Dr. Moore  
4 opined there is no evidence to support a diagnosis of dissociative  
5 disorder and it appears to have been based solely on Farrens's  
6 unreliable self-report, as the ALJ observes (Tr. 27, 49-51).

7 Farrens told Dr. Mabee he had more friends than his wife (Tr.  
8 314) and has reported living with friends, undermining assessed  
9 marked social limitations (Tr. 216, 252, 333, 517). Dr. Mabee  
10 opined the MMPI-2 results in 2008 "should be examined with caution  
11 due to potential over-reporting" (Tr. 316). A former employer  
12 (from December 2006 - May 2008) notes Farrens had no issues with  
13 coworkers, had no "write ups," was given no special consideration  
14 and was an average employee. The employer never saw "any sign of  
15 limitations, physical or mental." (Tr. 203-04)(emphasis added).  
16 The ALJ is also correct that the record shows depressive symptoms  
17 are well controlled with medication. See e.g., Tr. 484, 487.

18 The ALJ did not err by rejecting Dr. Arnold's contradicted  
19 opinion that Farrens suffers two marked social limitations. With  
20 respect to moderate limitations, Dr. Arnold assessed the ability  
21 to interact appropriately in public contacts as moderately  
22 impaired (Tr. 596), incorporated by the ALJ when she limited  
23 Farrens to work away from the public (Tr. 24). Dr. Arnold opined  
24 Farrens was moderately limited in the ability to maintain  
25 appropriate behavior in a work setting (Tr. 596). The ALJ  
26 correctly refused to adopt this limitation because it is not  
27 supported by the evidence.

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1 *W. Scott Mabee, Ph.D.*

2 Dr. Mabee first assessed Farrens on July 8, 2008 - about four  
3 months after onset (Tr. 309-19). The ALJ gave this opinion  
4 considerable weight, noting cognitive scores show Farrens has the  
5 ability to learn new information and engage in complex tasks  
6 through some form of repetitive exposure. Dr. Mabee opined  
7 limitations in judgment and recall are mild, testing shows memory  
8 is functional and activities of daily living do not appear  
9 problematic. He opined Farrens's personality characteristics are  
10 likely to affect his ability to establish relationships with the  
11 public, coworkers and supervisors but assessed a current GAF of  
12 60, indicating moderate symptoms or limitations. Farrens told Dr.  
13 Mabee he can typically get along with others in the workplace (Tr.  
14 314). The ALJ points out Dr. Mabee's assessment is supported by  
15 test results showing intact memory functioning and the MMPI-2  
16 results suggestive of over-reporting (Tr. 31, referring to Tr.  
17 309-19).

18 Farrens alleges the ALJ erred when the hypothetical omitted a  
19 moderate limitation in the ability to respond appropriately to and  
20 tolerate the pressures and expectations of a normal work setting.  
21 ECF No. 18 at 14-15. Farrens alleges because the ALJ gave Dr.  
22 Mabee's opinion significant weight and Dr. Mabee assessed this  
23 limitation (at Tr. 311), the ALJ erred by failing to adopt it.

24 Farrens is mistaken. The Commissioner notes the ALJ found  
25 Farrens is limited to occasionally accepting instructions from and  
26 responding appropriately to criticism from supervisors and setting  
27 realistic goals or making plans independently of others. She found  
28 Farrens should work away from the public and in close proximity

1 to, but not in close cooperation with, coworkers or supervisors.  
2 ECF No. 21 at 12, referring to Tr. 24. *Citing Hoopai v. Astrue*,  
3 499 F.3d 1071, 1077 (9<sup>th</sup> Cir. 2007), the Commissioner correctly  
4 observes the term "moderate" does not indicate a degree of  
5 limitation that must be expressly reflected in the RFC assessment.  
6 Id.

7 The evidence does not support this limitation, whereas the  
8 limitations adopted by the ALJ are supported by the record.

9 In June 2009 Dr. Mabee assessed Farrens again (Tr. 424-31).  
10 The ALJ gave this opinion less weight than Mabee's earlier opinion  
11 because (1) it was based on Farrens's unreliable self-report and  
12 on a recent suicide attempt<sup>2</sup> from which Farrens quickly improved  
13 (2) the mental status examination was relatively normal (3) other  
14 than the single suicide attempt there is no evidence Farrens's  
15 condition worsened between the two evaluations (4) Farrens has not  
16 sought the type of mental health treatment one might expect from a  
17 person with marked limitations in social functioning and (5) a  
18 person with marked social limitations is unlikely to have a group  
19 of friends, as Farrens does (Tr. 31, 216, 252, 314, 456, 459,  
20 517).

21 The ALJ's reasons are specific, legitimate and supported by  
22 substantial evidence. Farrens was terminated from mental health  
23 treatment because he failed to attend regularly. See e.g. Tr. 433,  
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25 <sup>2</sup>Farrens took an overdose of a prescribed antidepressant,  
26 amitriptyline, on June 7, 2009 reportedly after an argument with  
27 his fiancé (Tr. 396, 399, 405). About a month later Farrens  
28 reported he had increased his marijuana use over the past six  
months (Tr. 434). See also Tr. 251 (substance abuse of marijuana  
noted, will be recommended to treatment soon).

1 438-39, 443, 447-48. As noted, a former employer's opinion that  
2 Farrens had no issues with co-workers, had no "write-ups" for  
3 violating workplace rules and showed no sign of any mental  
4 limitations also supports the ALJ's RFC assessment (Tr. 203-04).

5 The evidence supports the weight the ALJ gave the conflicting  
6 medical evidence as well as the assessed RFC.

7 **CONCLUSION**

8 Having reviewed the record and the ALJ's conclusions, this  
9 court finds that the ALJ's decision is free of legal error and  
10 supported by substantial evidence. Accordingly,

11 **IT IS HEREBY ORDERED:**

12 1. Defendant's Motion for Summary Judgment, **ECF No. 21**, is  
13 **GRANTED**.

14 2. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is  
15 **DENIED**.

16 **IT IS SO ORDERED.** The District Court Executive is directed to  
17 file this Order, provide copies to the parties, enter judgment in  
18 favor of Defendant, and **CLOSE** this file.

19 **DATED** this 13<sup>th</sup> day of May, 2013.

20  
21 S/ James P. Hutton  
22 JAMES P. HUTTON  
23 UNITED STATES MAGISTRATE JUDGE  
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